

**United States District Court  
Western District of Texas  
Austin Division**

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

GREG ABBOTT, in his capacity as Governor  
of the State of Texas, and THE STATE OF  
TEXAS,

*Defendants.*

No. 1:23-cv-00853-DII

---

EPI'S CANOE & KAYAK TEAM, LLC AND  
JESSIE FUENTES,

*Plaintiffs,*

No. 1:23-cv-00836-DII

v.

STATE OF TEXAS, *et al.*,

*Defendants.*

---

**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY  
INJUNCTION**

# EXHIBIT D

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

UNITED STATES OF AMERICA, \*  
\*  
Plaintiff \*  
\*  
v. \* CIVIL ACTION  
\* NO. 1:23-00853-DAE  
GREG ABBOTT, in His \*  
Official Capacity as \*  
Governor of the State of \*  
Texas, and the State of \*  
Texas,  
\*  
Defendants. \*

VIDEOCONFERENCED ORAL DEPOSITION

OF

CAPTAIN JUSTIN PETERS

Monday, August 7, 2023

(REMOTELY REPORTED)

VIDEOCONFERENCED ORAL DEPOSITION OF CAPTAIN  
JUSTIN PETERS, produced as a witness at the instance of  
the Defendants, and duly sworn, was taken in the above-  
styled and numbered cause on Monday, August 7, 2023,  
from 11:17 a.m. to 12:44 p.m., before Debbie D.  
Cunningham, CSR in and for the State of Texas, remotely  
reported via Machine Shorthand, pursuant to the Federal  
Rules of Civil Procedure.

--ooOoo--

1 APPEARANCES

2

3 FOR PLAINTIFF:

4 U.S. ATTORNEY'S OFFICE - DEPARTMENT OF JUSTICE  
Environment & Natural Resources Division  
5 150 M. Street N.E.  
Washington, DC 20002  
6 (T) 202.514.2275

7 By: Kimere Kimball, Esq.  
kimere.kimball@usdoj.gov  
8 AND

9 U.S. ATTORNEY'S OFFICE - DEPARTMENT OF JUSTICE  
10 601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
(T) 210.384.7100

11 By: Mary Kruger, Esq.  
mary.kruger@usdoj.gov  
12

13 FOR DEFENDANTS:

14 OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
15 Special Counsel for Civil Litigation  
16 300 W. 15th Street  
Austin, Texas 78701  
17 (T) 512.475.4133

18 By: Patrick Sweeten, Esq.  
Patrick.Sweeten@oag.texas.gov  
19 AND  
Jake Marx, Esq.  
Jake.Marx@oag.texas.gov  
20

21 --ooOoo--  
22

23

24

25

1	INDEX	3
2	APPEARANCES	2
3		
4	EXAMINATION OF CAPTAIN JUSTIN PETERS:	
5	BY MR. SWEETEN	6
6	BY MS. KIMBALL	58
7		
8		
9	CHANGES AND SIGNATURE	60
10	REPORTER'S CERTIFICATION	62
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBIT INDEX		
2	Exhibit Number	Description	Page
3	Exhibit 1	1984 Coast Guard Determination	11
4	Exhibit 2	Image of Rio Grande River	11
5	Exhibit 3	Declaration of Captain Justin Peters	11
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 (Monday, August 7, 2023, 11:17 a.m.)

5

## P R O C E E D I N G S

3 THE REPORTER: This is the  
4 Deposition of Captain Justin Peters, in the  
5 matter of the United States of America versus  
6 Greg Abbott, et al. We are conducting this  
7 deposition remotely, and we are located in our  
8 preferred respective locations. We are on the  
9 record at 11:17 a.m. Central Standard Time.

10 My name is Debbie Cunningham,  
11 and my business address is 9901 Brodie Lane,  
12 Austin, Texas 78748.

13                   Would all parties present please  
14 introduce themselves for the record?

15 MR. SWEETEN: This is Patrick  
16 Sweeten on behalf of Governor Greg Abbott and  
17 the State of Texas.

18 MS. KIMBALL: This is Kimere  
19 Kimball U.S. Department of Justice, Environment  
20 & Natural Resources Division, on behalf of the  
21 United States; and with me today in San Antonio  
22 is Mary Kruger at the U.S. Attorney's Office of  
23 the Western District of Texas.

24 MR. SWEETEN: And let me add  
25 that Jake Marx is with me as well. I forgot to

1 introduce him.

2 THE WITNESS: My name is

3 Captain Justin Peters, U.S. Coast Guard.

4 (Witness sworn by the reporter.)

5 MR. SWEETEN: Let me just show  
6 that this deposition is being taken pursuant to  
7 the Federal Rules of Civil Procedure.

8 Also, through negotiations on  
9 Friday, Counsel for the State of Texas and  
10 Governor Abbott and Counsel for the DOJ agreed  
11 to take this deposition by Zoom, rather than  
12 require Mr. Peters -- or Captain Peters to  
13 appear in Texas or have this in person.

14 CAPTAIN JUSTIN PETERS,

15 having been duly sworn, testified as follows:

16 EXAMINATION

17 BY MR. SWEETEN:

18 Q. Captain Peters, will you state your  
19 full name, please?

20 A. Justin David Peters.

21 Q. And Justin -- I mean, Captain, how  
22 old are you?

23 A. 50.

24 [REDACTED] [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED]

1 Q. All right. And how long have you  
2 worked at the Coast Guard, sir?

3 A. Over 31 years.

4 Q. Okay. All right. As you know, I'm  
5 the attorney representing the State of Texas  
6 and Governor Abbott. I'm going to be taking  
7 your deposition today. Have you ever had your  
8 deposition taken before today?

9 A. No.

10 Q. Okay. You understand today that you  
11 are under oath here in this proceeding?

12 A. Yes.

13 Q. You've had the opportunity to speak  
14 with your lawyer about a deposition and what it  
15 is, correct?

16 A. That is correct.

17 Q. You understand that you'll be  
18 providing testimony to the Court in this case  
19 in the matter of The United States of America  
20 versus Gregg Abbott, et al., correct?

21 A. Yes.

22 Q. You understand that the testimony  
23 today that you will provide might be used in a  
24 court proceeding?

25 A. Yes.

1       Q. And that you're under oath today just  
2 as you would be if you were in court, correct?

3       A. Yes.

4       Q. All right. So I'm just going to go  
5 through a couple of ground rules since this is  
6 your first deposition. I'm not going to  
7 belabor these since I assume you've had the  
8 opportunity to talk to your attorney about  
9 this, but I'm going to be asking you a series  
10 of questions today. If at any time you do not  
11 understand a question that I'm asking you,  
12 please ask me to rephrase it; and I'll be more  
13 than happy to do that. Okay? Is that fair?

14      A. Yes.

15      Q. If you do answer the question, then  
16 I'll assume you understood what the question  
17 was asking. Is that fair?

18      A. Yes.

19      Q. Okay. A couple of things: The court  
20 reporter can't get down if we're both talking  
21 at the same time. So I'm going to try today to  
22 endeavor to let you finish your answer; and if  
23 you would please let me finish my question,  
24 that way we'll make sure we have a cleaner  
25 record here. Okay?

1 A. Yes.

2 Q. One other rule is the court reporter  
3 can't take down in the transcription that she's  
4 typing out today shakes of the head, nods,  
5 "uh-huhs" or "huh-uhs." So there may be times  
6 today -- it's normal in conversation for us to  
7 do those types of things and I typically would  
8 understand it; but because we're trying to make  
9 sure there's a clear record, there may be a  
10 time or two today that I say, "Does that mean  
11 'yes'?" Or I'll follow up on a nonverbal  
12 gesture; but at all times, if you would,  
13 provide a verbal answer. That way we'll make  
14 sure the transcription is clear. Okay?

15 A. Yes, I understand.

16 Q. Okay. Thank you.

17 Captain Peters, where do you  
18 live, sir?

19 A. I live in Annandale, Virginia.

20 Q. All right. And are you at the --  
21 tell me where your main office is. Where do  
22 you go to work?

23 A. Coast Guard Headquarters.

24 Q. Okay. And where is that?

25 A. Washington, D.C.

1       Q.    Okay.  Now, you've had the  
2 opportunity to speak with your attorney today  
3 in advance of this deposition; is that correct?

4       A.    Yes.

5       Q.    Okay.  And your attorney is Kimere  
6 Kimball?

7                   MR. SWEETEN:  I hope I got that  
8 right, Kimere.

9       A.    Yes, that's correct.

10      Q.    (BY MR. SWEETEN)  Okay.  And have you  
11 spoken, outside of your attorneys -- because  
12 I'm not going to ask you about conversations  
13 you had with her -- outside of her, have you  
14 had conversations about this deposition that  
15 you're providing today?

16      A.    Can you clarify if you're asking  
17 about scheduling the deposition or the  
18 deposition itself?

19      Q.    I'm not as interested in scheduling.  
20 Like, for example, if you've talked about times  
21 you'd be available or wouldn't be, things  
22 you're doing other than this, that's not what  
23 I'm asking.

24                   I'm asking more along the lines  
25 of you knew you had a deposition today.  Did

1 you talk to anyone other than your attorneys in  
2 advance of this deposition to prepare you for  
3 the deposition?

4 A. I spoke to Department of Justice  
5 attorneys and Coast Guard attorneys together.

Q. Did you speak to anybody outside of  
that group?

8 A. No.

9 Q. Were you shown any documents in those  
10 meetings?

11 A. I was shown my declaration.

12 Q. Okay. Were you shown any other  
13 documents?

14 A. No.

15 o. Okay.

16 | (Exhibit 1 marked.)

17 (Exhibit 2 marked.)

18 | (Exhibit 3 marked.)

19 | MR. SWEETEN: All right. Jake,

20 I need you to e-mail Kimere Kimball the

21 exhibits, please.

22 MS. KIMBALL: Sorry. Hold on

23 just a second. I don't have my e-mail open.

24 THE REPORTER: I assume this is

25 off the record?

1                   MR. SWEETEN: Yes, we can go off  
2 the record. Thank you.

3                   (Off the record from 11:28  
4                   to 11:31 a.m.)

5                   Q. (BY MR. SWEETEN) Captain Peters, I'm  
6 going to show you what's been marked as  
7 Exhibit Number 1 to this deposition; and it is  
8 a document that at the very top has U.S.  
9 Department of Transportation, United States  
10 Coast Guard letterhead. It's a letter dated  
11 October 19th, 1984.

12                   Do you have that in front of  
13 you, sir?

14                   A. Yes, I do.

15                   Q. Okay. And you're familiar with this  
16 document, correct?

17                   A. I have seen this document before,  
18 yes.

19                   Q. Okay. Because this document was  
20 actually attached to the preliminary injunction  
21 that was filed by the Department of Justice.

22 Are you aware of that, sir?

23                   A. I'm aware that this was a  
24 declaration, yes.

25                   Q. Okay. So let's talk about what this

1 document is. First of all, it is a document  
2 written by T. W. Snook of the United States  
3 Coast Guard; is that correct?

4 MS. KIMBALL: I can scroll over  
5 here.

6 A. Yes.

7 Q. (BY MR. SWEETEN) And it is from --  
8 it says, "From: Commander, Eighth Coast Guard  
9 District, To: Commanding Officer, Marine  
10 Safety Office Corpus Christi, Texas." Did I  
11 describe that correctly?

12 A. Yes.

13 Q. All right. Now, the date -- this  
14 letter is 40 years old almost, correct?

15 A. 1984, yes.

16 Q. It's 39 years old. Is my math wrong?

17 A. Um, I mean, I don't want to get my  
18 math wrong (laughing.)

19 Q. All right. Very good.

20 So let's look at the document  
21 that's been attached to an affidavit in this  
22 case and attached to the Preliminary Injunction  
23 Motion filed by the Department of Justice. In  
24 Number 1 it says, "From 1947 to 1975 the Rio  
25 Grande River was listed among the navigable

1       waters of the United States pursuant to  
2       treaties with Mexico and for Coast Guard  
3       regulatory purposes." Did I read that first  
4       sentence correctly?

5           A. Yes.

6           Q. Okay. And the purpose of -- what is  
7       the purpose of the navigability determination  
8       that's here on this page?

9           A. I'm not in a position to answer that.

10          Q. Okay. Have you reviewed this  
11       document before today?

12          A. I have seen the document, yes.

13          Q. Okay. And you understand that it  
14       states that, "The Rio Grande River was listed  
15       among the navigable waters of the U.S. pursuant  
16       to treaties with Mexico and for Coast Guard  
17       regulatory purposes." Do you see that?

18          A. Yes, I do.

19          Q. Now, it's also the case that if we go  
20       to Number 3, that that letter says, "This  
21       represents the opinion of the Coast Guard only  
22       as to the extent of its own jurisdiction, and  
23       does not address the jurisdiction of other  
24       agencies." Did I read that last sentence  
25       correctly?

1 A. Yes.

2 Q. And that sentence is part of this  
3 navigability determination that has been  
4 provided in this lawsuit, correct?

5 A. That is my understanding.

6 Q. Okay. Are you aware of  
7 Captain Brandy Parker's review -- she is, as I  
8 understand it, with the Judge Advocate  
9 General's Office of the Coast Guard -- her  
10 review of the Coast Guard's navigability  
11 determination?

12 A. I am familiar that she provided this  
13 document to the Department of Justice.

14 Q. Okay. And this is not a document  
15 that you provided. This is something that  
16 Captain Brandy Parker provided, correct?

17 A. That is my understanding.

18 Q. Okay. So is it the case that -- when  
19 I asked you what it was earlier, it sounded  
20 like you didn't have great familiarity with  
21 this document and what its import is. Is that  
22 fair to say, Captain Peters?

23 A. Yes.

24 Q. Okay. And so if I were to ask you if  
25 you agreed with her determinations, her

1 findings about the '84 navigability  
2 determination and whether or not it's still in  
3 effect, that's not something you would know  
4 sitting here today, correct?

5 A. That is not under -- that information  
6 is not under my purview.

7 Q. Okay. And so you don't know that as  
8 you're sitting here today, correct?

9 A. That is correct.

10 Q. All right. And you're not testifying  
11 one way or the other as to whether or not this  
12 is a navigability determination that is still  
13 in effect, correct?

14 A. I'm not in a position to answer that.

15 Q. Okay. And so the answer is "no,"  
16 you're not testifying one way or the other,  
17 correct, about this navigability determination?  
18 I just want to make sure we're clear, close  
19 that out.

20 A. I am not testifying to the contents  
21 of this document.

22 Q. All right. I understand. Thank you:  
23 "The Rio Grande River remains  
24 navigable waters of the United States." That's  
25 something that Captain Brandy Parker said.

1 That's not something you're here to testify  
2 about or know about, correct?

3 A. That is correct.

4 Q. Okay. That the navigability  
5 determination makes no qualification, that's  
6 not something you're here to talk about.

7 That's something that we would have to talk  
8 with Captain Parker about; is that correct?

9 A. I am not able to answer that.

10 Q. Okay. If I were to ask you what is  
11 the definition of "navigable waters" that was  
12 used by T. W. Snook in providing this  
13 determination, you wouldn't know that, correct?

14 A. That's correct.

15 Q. Okay. The same with what  
16 Captain Parker's opinion is in what she  
17 reviewed. You wouldn't know what she was  
18 utilizing as the definition of "navigable  
19 waters" used for this determination in this  
20 letter, correct?

21 A. That is correct.

22 Q. Okay. Thank you for your testimony.

23 All right. Now, as you're  
24 sitting here today, are you aware there are  
25 1247 river miles between Texas and -- on the

1       **southern border of Texas, sir?**

2           A.     No, I am not.

3           Q.     Okay. Then let me ask it more  
4 generally. With respect to the -- hold on a  
5 second.

6                   **In the letter it talks about  
7 mile 0 to mile 1247, correct?**

8                   MS. KIMBALL: Are we talking  
9 about Exhibit 1?

10                  MR. SWEETEN: Yes, ma'am. Yes,  
11 Kimere.

12                  MS. KIMBALL: Can you just tell  
13 me where that is so I can get the document --

14                  MR. SWEETEN: Oh, sure.

15 Paragraph 1. And it is, I think, Line 2.

16                  A.     Can you restate the question?

17                  Q.     **(BY MR. SWEETEN) Yeah, yeah, no  
18 problem.**

19                   **It says, "This determination  
20 covers the river for the entire distance..."  
21 And if you skip down, it says mile 0 to mile  
22 1247. You are not here to testify whether or  
23 not -- what of those miles of river you believe  
24 to be navigable today, correct?**

25                  A.     I am not able to testify to that.

1       Q. Okay. And you're not offering an  
2 opinion on that, correct?

3       A. No, I am not.

4       Q. Okay. Thank you.

5                   Oh, I forgot to ask you a couple  
6 of questions about the Coast Guard. The Coast  
7 Guard, tell me generally: What is their job?

8       A. The Coast Guard has multiple  
9 statutory missions that are assigned to us via  
10 law. The Coast Guard conducts a variety of  
11 missions, to include search and rescue, law  
12 enforcement, marine environmental protection,  
13 waterway management, and a variety of other  
14 missions.

15      Q. Thank you, sir.

16                  Now, the Coast Guard is a public  
17 entity, correct? It is not a private entity  
18 engaged in commerce; is that accurate?

19      A. That is correct.

20      Q. And the Coast Guard is not a  
21 commercial operation in any way, correct?

22      A. That is correct, to the best of my  
23 knowledge.

24      Q. Okay. Now, we talked a little bit  
25 about this on Exhibit 1, which was the Coast

1     Guard's determination. Are you aware of any  
2     other federal agency, other than the Coast  
3     Guard, that has determined that the segments  
4     within Maverick County of the Rio Grande River  
5     are, indeed, navigable?

6           A. I do not know.

7           Q. Okay. Are you aware as you're  
8     sitting here of a single federal court decision  
9     that has determined that the segments of the  
10    river in Maverick County are in any way  
11    navigable?

12          A. I am not aware of that information.

13          Q. Thank you.

14               Are you aware of a single state  
15    court determination that has held that the  
16    river areas within Maverick County are  
17    navigable?

18          A. I do not have that information.

19          Q. Okay. Let me ask you another  
20    question. It's the case, isn't it, that the  
21    Coast Guard does not make navigability  
22    determinations under the Rivers and Harbors  
23    Act? Is that accurate?

24               MS. KIMBALL: Objection, calls  
25    for a legal conclusion and also is outside the

1 scope of discovery authorized by the Court,  
2 which is limited to just the question of  
3 obstructions.

4                   The witness is instructed not to  
5 answer.

6                   MR. SWEETEN: Okay. So the  
7 instruction is you're telling him not to answer  
8 the question that I asked; is that right?

9                   MS. KIMBALL: That's correct.

10                  MR. SWEETEN: Okay.

11                 Q. (BY MR. SWEETEN) Now, have you been  
12 to -- you understand that at issue in this  
13 litigation are a series of buoys that are in  
14 the -- currently in the Rio Grande River in  
15 Maverick County, right?

16                 MS. KIMBALL: Could you clarify  
17 if Maverick County is the county where Eagle  
18 Pass is?

19                 MR. SWEETEN: Maverick County is  
20 where Eagle Pass is, yes, Kimere.

21                 A. Yes, I am aware.

22                 Q. (BY MR. SWEETEN) Okay. Now, have  
23 you, yourself, personally been to the site  
24 where the buoys are?

25                 A. No.

1 Q. Okay. And I'm asking: Ever in your  
2 life?

3 A. That is correct.

4 Q. Okay.

5 A. I have not been there.

6 Q. Thank you.

7 So if I were to ask you  
8 personally as you're sitting here whether or  
9 not that stretch of river where the buoys  
10 are -- and I think the Department of Justice  
11 has alleged it's a thousand feet -- if I were  
12 to ask you what commercial traffic looks like  
13 in that area, if there is any, would you be  
14 able to answer that?

15 A. I do not know that information.

16 Q. Okay. Thank you.

17 I want to circle back to the  
18 letter as far as -- and I think I asked this  
19 already, but I just want to be clear; and then  
20 we'll leave that whole area, Captain Peters.  
21 As far as what the basis of the Coast Guard's  
22 navigability determination contained in this  
23 letter is, that's not something you know one  
24 way or the other; is that accurate?

25 A. That information is not in my

23

1 purview.

2 Q. Okay. Thank you, sir.

3 MR. SWEETEN: One second. Okay?

4 (Off the record from 11:44

5 to 11:45 a.m.)

6 Q. (BY MR. SWEETEN) Okay. I told you  
7 we'd leave navigability. I want to go on to  
8 another subject. It's related, though.

9 Are you aware of what U.S. Coast  
10 Guard operations are on the Rio Grande?

11 A. I am aware of some Coast Guard  
12 operations on the Rio Grande, but not in their  
13 totality.

14 Q. Okay. Now, it's my understanding --

15 MS. KIMBALL: Sorry. We were  
16 disconnected for a second. I don't know if you  
17 asked a question or...

18 MR. SWEETEN: Okay. No worries.  
I'll start the question over.

19 Q. (BY MR. SWEETEN) It's the case,  
20 isn't it, that the closest Coast Guard base to  
21 the Rio Grande River would be found at  
22 South Padre Island; is that correct?

23 A. I do not know that for a fact.

24 Q. Okay. It's the case, isn't it, that

1       **there is no Coast Guard base on the Rio Grande,**  
2       **correct?**

3           A.     To the best of my knowledge, that is  
4       correct.

5           Q.     All right. And, Captain Peters, let  
6       me ask you: Have you ever been on the Rio  
7       Grande River?

8           A.     No.

9           Q.     Okay. Have you ever served while in  
10      the Coast Guard on the Rio Grande River?

11          A.     Not on the Rio Grande River.

12          Q.     Okay. You said earlier that you were  
13      able to describe some operations on the Rio  
14      Grande. Let me ask you this: You understand  
15      that the Rio Grande, it goes from Brownsville  
16      to McAllen; and then it goes up to Eagle Pass  
17      and to Del Rio. Have you ever at any time been  
18      aware of a Coast Guard operation that occurred  
19      north of McAllen, upriver from McAllen?

20          A.     I am not familiar with the geography  
21      of the border.

22                  MS. KIMBALL: Do you have a map  
23      that you can show?

24                  MR. SWEETEN: I think we do, but  
25      let me ask it a different way.

1           Q. (BY MR. SWEETEN) What operations are  
2 you familiar with that the Coast Guard performs  
3 on the Rio Grande River, if any?

4           A. The Coast Guard currently has  
5 deployable specialized forces, which include  
6 boats, in the Rio Grande Valley that are  
7 currently deployed; and there was a team that  
8 was also operating on Falcon Lake that is no  
9 longer there.

10          Q. Okay. Now, where is Falcon Lake in  
11 relation to where these contested buoys are?

12          A. I do not -- I cannot testify to that.

13          Q. Okay. Do you know if Falcon Lake is  
14 accessible to the river at the point where the  
15 buoys are?

16          A. I do not have that information.

17          Q. Okay. Are you familiar -- now, you  
18 had talked about the Rio Grande Valley,  
19 correct? You described an operation that  
20 occurred there, correct?

21          A. I understand that there are boats  
22 operating in the Rio Grande Valley, but I do  
23 not know the exact location.

24          Q. Do you know how far north Eagle Pass  
25 is from the Rio Grande Valley?

1 A. No.

2 Q. Okay. At what point were the  
3 operations occurring in the Rio Grande Valley,  
4 where geographically?

5 A. I do not have that information.

6 Q. Okay. If testimony were to indicate  
7 that the Coast Guard -- that individuals have  
8 never seen a Coast Guard vessel north of  
9 McAllen, would you have any -- upriver from  
10 McAllen, would you have any reason to dispute  
11 that as you're sitting here?

12 A. I do not know that information.

13 Q. Okay. Prior to making the  
14 declaration in this case, Captain Peters, were  
15 you aware of those Coast Guard operations,  
16 those two that you just described?

17 A. Yes.

18 Q. Okay. Were you aware prior to  
19 providing the declaration in this case that  
20 segments of the Rio Grande River can be -- are  
21 completely dry?

22 A. No.

23 Q. Okay. Do you know that one way or  
24 the other?

25 A. I do not know that information.

1           Q. And I should say "can be dry." Will  
2 you answer the question just with -- let me ask  
3 it again.

4                         Were you previously aware prior  
5 to providing the declaration in this matter  
6 that some segments of the Rio Grande River can  
7 be dry?

8           A. I have seen that on the news.

9           Q. Okay.

10                  MS. KIMBALL: Sorry. We just  
11 disconnected and reconnected again. Did you  
12 ask a question?

13                  MR. SWEETEN: No, I did not ask  
14 a question during that time, Kimere.

15           Q. (BY MR. SWEETEN) What Coast Guard  
16 operations exist near Eagle Pass other than  
17 you've described something at Falcon Lake and  
18 you described something in the Rio Grande  
19 Valley? Can you describe any other operations  
20 that occur at or near Eagle Pass, Texas?

21           A. The Coast Guard has members deployed  
22 to Eagle Pass now that are assisting Customs  
23 with information technology support.

24           Q. Okay. When were those assets  
25 deployed in Eagle Pass?

1           A.     Approximately 60 days ago, and they  
2 are still there now.

3           Q.     All right. And they were -- and can  
4 you tell me -- you say those assets are there.  
5 Are those assets in the water, or are those  
6 assets on the surface?

7           A.     It is personnel only.

8           Q.     Okay. So there's no -- the Coast  
9 Guard has deployed no watercraft in Maverick  
10 County or Eagle Pass; is that correct?

11          A.     I can only testify to where they have  
12 been in recent memory, but I cannot say that  
13 definitively over a long period of time.

14          Q.     Okay. Well, what about in the last  
15 60 days? Has the Coast Guard deployed a single  
16 watercraft in Maverick County or Eagle Pass in  
17 the last 60 days?

18          A.     No, not to the best of my knowledge.

19          Q.     Okay. Now, the individual from the  
20 Coast Guard that was sent to assist Customs and  
21 Border who was not tasked with having a  
22 watercraft, what is that individual's job title  
23 or duties -- job duties is a better question?

24               MS. KIMBALL: Objection,  
25 misstates testimony.

1                   But you can answer.

2                   A. Those members that are there are  
3 performing information technology assistance.

4                   Q. (BY MR. SWEETEN) Okay. So you've  
5 got some Coast Guard IT personnel working with  
6 Customs and Borders. And that's the only  
7 presence that you're able to testify about in  
8 Maverick County; is that accurate?

9                   A. That is the only presence that I am  
10 able to testify to.

11                  Q. Okay. Thank you.

12                  Has the Coast Guard conducted  
13 water rescues on the stretch of river located  
14 within Maverick County?

15                  A. I'm not aware of that.

16                  Q. And that's at any point, correct?

17                  A. That is correct. I do not have that  
18 information.

19                  Q. Okay. Has the Coast Guard performed  
20 search and rescue in Maverick County at any  
21 time?

22                  A. I do not know.

23                  Q. Has the Coast Guard provided marine  
24 environmental responses or law enforcement  
25 responses in Maverick County at any time?

1 A. I do not know.

2 Q. Does the Coast Guard assist either  
3 the federal government or the Texas state  
4 officials with stopping drug trafficking,  
5 trafficking of Fentanyl, or human trafficking  
6 in Maverick County?

7 A. I do not know.

8 Q. Okay. Are you familiar -- I know  
9 that you said that -- let me just make sure  
10 it's clear. You have not been to this stretch  
11 of river where the contested buoys are before  
12 today, correct?

13 A. That is correct.

14 Q. Are you familiar with what types of  
15 watercraft are typically used in the river  
16 segment at issue near Eagle Pass?

17 A. No, I am not.

18 Q. Have you ever seen any vehicles on  
19 the Rio Grande River in Maverick County  
20 transporting goods or logs?

21 A. No, I have not.

22 Q. Okay. Have you ever seen any non-law  
23 enforcement watercraft in the area of the buoys  
24 in Maverick County that were recreational  
25 craft?

1 MS. KIMBALL: Objection, lacks  
2 foundation.

3 But you can answer.

4 A. I do not know that information.

5 Q. (BY MR. SWEETEN) Okay. Have you  
6 ever seen watercraft in any other segment of  
7 the Rio Grande River?

8 MS. KIMBALL: Objection, lacks  
9 foundation.

10 But you can answer.

11 A. No.

12 Q. (BY MR. SWEETEN) Have you researched  
13 the historical watercraft used in the  
14 Rio Grande area in Maverick County?

15 A. No.

16 Q. Do you know if the Rio Grande River  
17 in Maverick County is subject to the ebb and  
18 flow of tides?

19 A. No, I do not know.

20 Q. Are you aware of whether or not the  
21 segment of river where the buoys are is  
22 especially treacherous to persons who are  
23 crossing in the water?

24 A. I do not know.

25 Q. Would it in any way surprise you to

1 know that this segment of river where the buoys  
2 are comprised of sandbars; water; shallow  
3 water; water with inconsistent depths; small  
4 islands; rocks; manmade debris; natural debris,  
5 such as logs and stumps; and sandy shoals?

6 A. I do not have that information.

7 Q. Okay. I would assume, based on your  
8 prior testimony, that you are not here to opine  
9 on whether the Rio Grande River near Eagle Pass  
10 is a highway of commerce, correct?

11 A. I do not have that information.

12 Q. Okay. As far as whether or not  
13 interstate commerce is transported at this  
14 segment of the river in Maverick County, you  
15 don't have an opinion one way or the other as  
16 you're sitting here, correct?

17 A. I do not have that information.

18 Q. Okay. All right. You stated in your  
19 affidavit -- do you have your affidavit in  
20 front of you, Captain Peters?

21 A. Yes.

22 Q. You stated in your affidavit that you  
23 were informed that the State of Texas is  
24 constructing a floating barrier within the  
25 boundaries of the Rio Grande River, correct?

1 A. That is correct.

2 Q. Who informed you of this, sir?

3 A. Coast Guard attorneys.

4 Q. Okay. Was that at or near the  
5 time that your declaration was signed,  
6 Captain Peters?

7 A. It was prior to the declaration.

8 Q. Okay. How much before?

9 A. Approximately one week.

10 Q. Okay. So a week before the date of  
11 your declaration, which I think here is the  
12 25th day of July, so on July 18th, you were  
13 first -- approximately --

14 MS. KIMBALL: Sorry.

15 Q. (BY MR. SWEETEN) I'll start over. I  
16 apologize.

17 A. Thank you.

18 Q. So you indicated that you first  
19 learned of the construction of the buoys some  
20 seven days before the execution of your  
21 declaration, which is dated July 25th, 2023; is  
22 that correct?

23 A. That is the date of the declaration.  
24 I had personal knowledge that the buoys were  
25 being placed from watching the news. That was

1 prior to being informed by Coast Guard  
2 attorneys.

3 Q. Okay. I think I understand. So do  
4 you know approximately when the buoy  
5 construction began?

6 A. I do not.

7 Q. Okay. And there's some other  
8 declarants that have talked about there was a  
9 meeting between DPS and some members of the  
10 federal government. Were you ever involved in  
11 any meetings to discuss the buoys prior to you  
12 first learning about them on the news?

13 A. No.

14 Q. Okay. So you first learned about it  
15 on the news. Do you think that would have been  
16 sometime in July?

17 A. It may have been in July, or it could  
18 have been prior to. I don't recall.

19 Q. Okay. But then the first official  
20 contact you had -- so you had seen it on the  
21 news; and then you said a week before the  
22 declaration was signed, you were approached to  
23 discuss the buoys, correct?

24 A. Yes.

25 Q. And who approached you?

1 A. Coast Guard attorneys.

2 Q. Okay. So from an operational  
3 standpoint, the only time that you were ever  
4 contacted or that you've discussed the buoys in  
5 any part of your job at the Coast Guard was  
6 when you were first contacted by Coast Guard  
7 attorneys about the buoys, right?

8 A. Yes.

9 Q. Have you seen pictures of the  
10 floating buoys?

11 A. Yes.

12 Q. And you have described the string of  
13 buoys that exist near the Camino Real  
14 International Bridge in your affidavit,  
15 correct?

16 A. Yes, it is located in my affidavit.

17 Q. Okay. And do you know where exactly  
18 the Camino Real International Bridge is in  
19 relation to Eagle Pass?

20 A. No.

21 Q. I think we've established from your  
22 testimony that you would not have seen those in  
23 person. What were you relying upon to say that  
24 you have seen those floating buoys?

25 MS. KIMBALL: Objection,

1 misstates the document.

2 Q. (BY MR. SWEETEN) Okay. Well, let me  
3 find in the document specifically where that  
4 is; and then we can talk about it.

5 All right. So I've got  
6 Paragraph 4. It says, "I have been informed  
7 that the State of Texas is constructing a  
8 floating barrier within the boundaries of the  
9 Rio Grande River." Let's stop there.

10 You were informed by Coast Guard  
11 attorneys; is that correct?

12 A. That is correct.

13 Q. And that was at or near the time you  
14 were asked to sign a declaration in this case,  
15 correct?

16 A. That was prior to me signing the  
17 declaration.

18 Q. It was a week before, right?

19 A. Yes.

20 Q. Okay. Then it says, "The floating  
21 barrier reportedly consists of a string of  
22 buoys between 4 to 6 feet in diameter." Who  
23 provided you that information?

24 A. Coast Guard attorneys.

25 Q. Okay. A week before you signed your

1 declaration, correct?

2 A. Yes.

3 Q. Okay. Then you say, "...which is  
4 anchored to the bed of river near the Camino  
5 Real International Bridge, Eagle Pass, Texas."

6 Did I read that right?

7 A. Yes.

8 Q. Okay. And who told you that it was  
9 anchored to the bed of the river near the  
10 Camino Real International Bridge?

11 A. Coast Guard attorneys.

12 Q. A week before the declaration,  
13 correct?

14 A. Yes.

15 Q. And just to be clear, you've never  
16 seen these buoys before with your own eyes?

17 A. That is correct.

18 Q. Now, when you were told these things,  
19 that they are 4 to 6 feet in diameter, that  
20 they are anchored to the bed of the river, this  
21 was told to you by the lawyers in the case?

22 (Connection with the witness  
23 lost.)

24 THE REPORTER: Do you want me to  
25 go off the record?

1 MR. SWEETEN: Yeah, that's fine.

2 Thank you.

3 (Off the record from 12:03

4 to 12:14 p.m.)

5 Q. (BY MR. SWEETEN) Before we left,  
6 there was a question that I had asked. Then  
7 you got cut off, and we didn't hear your  
8 answer. So I'm going to have Debbie read the  
9 question, please.

10 (The requested material was read  
11 by the reporter as follows:

12 "QUESTION: Now, when you were  
13 told these things, that they are 4 to 6 feet in  
14 diameter, that they are anchored to the bed of  
15 the river, this was told to you by the lawyers  
16 in the case?" )

17 A. By Coast Guard attorneys, yes.

18 Q. (BY MR. SWEETEN) And no one else?

19 A. No.

20 Q. All right. You described the string  
21 of buoys as being anchored to the bed of the  
22 river; is that correct?

23 A. Yes.

24 Q. Do you have any personal knowledge as  
25 to how those were anchored to the bed?

1       A.     The only personal knowledge I have is  
2 what I saw in the news.

3       Q.     Okay. And as far as whether they are  
4 or whether they aren't anchored to the bed,  
5 that's not something that you have personal  
6 knowledge of, right?

7       A.     I do not have that knowledge.

8       Q.     Okay. And, similarly, if I were to  
9 ask you how the buoys are affixed, you don't  
10 know the answer to that, correct?

11      A.     No, I do not.

12      Q.     Okay. Now, you indicated that the  
13 State of Texas did not contact the Coast Guard  
14 prior to the installation and construction of  
15 the floating barriers. That's what you said,  
16 isn't it?

17      A.     I said the Coast Guard was not  
18 contacted by the State of Texas. That is  
19 correct to the best of my knowledge.

20      Q.     Okay. Is it your testimony that the  
21 State of Texas had some statutory duty to  
22 contact the Coast Guard prior to setting up  
23 buoys in the portion of the Rio Grande River in  
24 Maverick County?

25           MS. KIMBALL: Objection, calls

1 for a legal conclusion.

2 You can answer.

3 A. Can you restate the question, please?

4 Q. (BY MR. SWEETEN) Yes. Why are you  
5 saying that the U.S. Coast Guard was not  
6 contacted by the State of Texas prior to the  
7 installation and construction of the floating  
8 barrier? That's what Paragraph 5 says, right?

9 A. Paragraph 5 says, "The U.S. Coast  
10 Guard was not contacted by the State of Texas  
11 prior to the installation and construction of  
12 this floating barrier."

13 Q. Okay. And you're not suggesting in  
14 any way that the State of Texas had some duty  
15 to contact the Coast Guard about that  
16 installation, are you?

17 A. That information would not be under  
18 my purview.

19 Q. Okay. Now, when you use the word  
20 "construction" as you had -- as you've done in  
21 Paragraph 4 -- it says, "I have been informed  
22 the State of Texas is constructing a floating  
23 barrier," what do you mean by "constructing a  
24 floating barrier"?

25 A. I would -- I would use that term

1 to -- installing, erecting, or constructing, my  
2 personal view of the -- from the news was --  
3 showed excavators putting and moving the  
4 barriers in the river.

5 Q. Okay. But "construction" is the term  
6 you used, not "installing" or "erecting." You  
7 said, "construction." Is there a reason you  
8 chose that over "placing," for example?

9 A. No.

10 Q. Okay. Now, you don't have any  
11 personal knowledge as to whether any, quote,  
12 "excavation" occurred at the site, do you?

13 A. No, I do not.

14 Q. Okay. And you didn't personally  
15 observe construction, correct?

16 A. Only what I saw in the news.

17 Q. Okay. And you didn't personally  
18 observe the installation that you talk about,  
19 correct?

20 A. Only what I've seen in the news and  
21 what I was informed by Coast Guard attorneys.

22 Q. Other than what you saw in the  
23 news -- and, by the way, are we talking about  
24 print media or broadcast media or both?

25 A. Broadcast media.

1       Q. Okay. And so you saw some video film  
2 on -- like, are we talking about on ABC news,  
3 on a news source like that?

4       A. I generally watch Fox News and CNN.

5       Q. Okay. And so you would have seen  
6 the -- whatever was going on with the buoys  
7 that you saw, you saw it on TV on Fox or CNN?

8       A. Yes.

9       Q. Now, you describe these buoys as a  
10 floating barrier, don't you?

11      A. Yes.

12      Q. Now, it's the case, isn't it, that  
13 the buoys that are present that you've seen on  
14 TV do not stretch across the river laterally to  
15 block upward and downstream traffic, if it even  
16 exists there, correct?

17      A. I only know what I saw on the news --

18      Q. Okay. And so what you --

19      A. -- and what I was told by Coast Guard  
20 attorneys.

21      Q. Okay. So what you saw on the news  
22 was, you would agree with me, not a buoy that  
23 blocked upstream or downstream traffic,  
24 correct?

25      A. I cannot attest to that.

1 Q. You don't know one way or the other?

2 A. No.

3 Q. You're not affirmatively telling this  
4 Court that in any way, shape, or form, that the  
5 string of buoys is impeding upstream or  
6 downstream traffic at the location of the  
7 buoys, correct?

8 A. I do not have that information.

9 Q. Okay. And if I were to ask you: Can  
10 watercraft, to the extent any even exist at  
11 this location, go upstream or downstream,  
12 that's not an answer that you have for the  
13 Court today, correct?

14 A. I am not in a position to answer  
15 that.

16 Q. Okay. Now, when you used the term  
17 "floating barrier" in Paragraph 4 and in  
18 Paragraph 6, who coined that term for you?

19 A. The draft language was provided by  
20 Coast Guard attorneys.

21 Q. Okay. That's not your language; that  
22 was provided to you, correct?

23 A. That is correct.

24 Q. Okay. And as far as -- I've already  
25 sort of asked you this -- a barrier to what, do

1 you have any information on that?

2 A. Only what I saw in the news.

3 Q. Okay. Now, the buoys were completed.

4 Have you seen them since they were completed,

5 Captain Peters?

6 A. I do not know when they were  
7 completed. I can't answer that.

8 Q. Okay. And have you seen them since  
9 they were totally completed?

10 A. I do not know when they were  
11 completed.

12 Q. Do you have any information to  
13 indicate that the State of Texas has tried to  
14 go string another string of floating buoys  
15 somewhere else in the river?

16 A. I do not have that information.

17 Q. Now, you've been in the Coast Guard  
18 31 years, correct?

19 A. Yes.

20 Q. And you have been on -- have you  
21 spent time on watercraft?

22 A. Yes.

23 Q. And can you give us some idea of your  
24 tours of duty in the Coast Guard, like, where  
25 you've served on watercraft, particularly?

1       A. I have served on large ships, down  
2 to small, 25-foot boats from Cape Cod,  
3 Massachusetts to Florida.

4       Q. Okay. I bet I almost don't even have  
5 to ask this: A log boom, do you know what that  
6 is?

7       A. No.

8       Q. Okay. Do you know what a boom is,  
9 generally?

10      A. Can you define it for me?

11      Q. Well, I was going to ask if you knew  
12 what a boom was generally in nautical terms.

13      A. A boom from -- there are multiple  
14 uses of the term.

15      Q. So I've already asked you about the  
16 log boom. That's not something you've got  
17 familiarity with?

18      A. No.

19      Q. What about an oil boom?

20      A. Yes.

21      Q. Okay. Now, tell me: What is the  
22 function of an oil boom?

23      A. It is to -- in the Coast Guard, it is  
24 used to encircle an environmental spill to  
25 assist in preventing it from spreading.

1       Q.    So the oil boom is designed to  
2 contain a spill, correct?

3       A.    That is the use of it, yes.

4       Q.    Okay. And booms can be used to  
5 contain anything, like, logs or floating  
6 debris, correct?

7       A.    I can only attest to what we use them  
8 for in the Coast Guard, which is to contain a  
9 substance that may have been released into the  
10 water.

11      Q.    Okay. And you would agree that booms  
12 can also be something -- could be defined as a  
13 long beam projecting from the mast of a derrick  
14 to support or guide cargo; is that right?

15      A.    That's not information that I can  
16 answer and attest to.

17      Q.    Okay. Now, you would agree that the  
18 floating buoys are not a wharf, correct?

19      A.    I cannot attest to that.

20      Q.    Okay. Do you know if -- so you're  
21 not attesting to whether or not they're  
22 dolphins or piers or breakwaters or bulkheads,  
23 jetties or booms? That's not your testimony,  
24 right?

25      A.    I cannot attest to what the buoys

1 are.

47

2 Q. Okay.

3 MR. SWEETEN: All right. Give  
4 me one second. I'm still trying to -- I'm  
5 going to go off the record for 3 minutes and be  
6 right back on. We're getting near the end,  
7 Captain Peters. Okay?

8 THE WITNESS: Yes.

9 MR. SWEETEN: Thank you, sir.

10 (Off the record from 12:26  
11 to 12:27 p.m.)

12 Q. (BY MR. SWEETEN) All right. Captain  
13 Peters, we're getting near the end; but I do  
14 have more questions for you, sir. Okay?

15 A. Yes, sir.

16 Q. Now, in your affidavit -- and I'm  
17 looking at Paragraph 7 in particular -- you  
18 used the term, quote, "navigable waterway,"  
19 "navigable channel," "navigational traffic  
20 patterns." Would you agree with me that those  
21 words were given to you by the Coast Guard  
22 attorneys in your first meeting prior to  
23 providing the declaration in this case?

24 A. They were given to me in the draft  
25 declaration.

1           Q. Okay. So those are not your words.

2 Those are the words of the attorneys for the  
3 Coast Guard?

4           A. They are my words in there, in my  
5 declaration; but the language specifically was  
6 provided by Coast Guard attorneys.

7           Q. Okay. So the first people to call it  
8 "navigable waterway," "navigable channel,"  
9 "navigational traffic patterns," the people  
10 that coined those terms for you gave this to  
11 you in a draft already written, correct?

12          A. It was a collaborative process. They  
13 submitted the first draft.

14          Q. Okay. But those terms were first  
15 given to you by the Coast Guard; and then you  
16 signed the declaration, right?

17          A. Yes.

18          Q. All right. So let's go to  
19 Paragraph 7 where you use it. You say, "If  
20 consulted, the Coast Guard will require further  
21 study of the barrier to appropriately assess  
22 the impacts of the barrier to the navigable  
23 waterway to ensure that placement of this  
24 structure within a navigable waterway of the  
25 United States complies with all applicable laws

1 and regulations." Did I read that correctly?

2 It's the second sentence of the paragraph.

3 A. Yes, you did.

4 Q. All right. Now, what are you saying  
5 with respect to navigable waterway? What does  
6 that mean here?

7 A. A federal navigable waterway would  
8 have -- if the Coast Guard is consulted, would  
9 conduct study of that waterway for any -- if a  
10 barrier was placed and the Coast Guard was  
11 consulted, the Coast Guard would conduct  
12 studies to appropriately assess whether it was  
13 in compliance with any federal laws and  
14 regulations.

15 Q. Okay. So you were describing an  
16 instance where if the State of Texas were to  
17 seek a permit to construct a floating barrier  
18 through the Army Corps of Engineers, right?

19 A. That is my understanding, but  
20 waterway management is not within my purview.

21 Q. Okay. And that's kind of what I'm  
22 getting at. When you're calling it a navigable  
23 waterway, you're talking about the general  
24 process of a navigable waterway. It is not  
25 your opinion and you're not trying to tell this

1 Court that, "I know this is a navigable  
2 waterway," right?

3 A. I have seen the declaration from  
4 Coast Guard District 8 that defines it as a  
5 navigable waterway. That's the only way I can  
6 define that.

7 Q. Okay. So the only basis for you --  
8 if you were even saying this is a navigable  
9 waterway, the only basis for that would be  
10 looking at the affidavit of another witness in  
11 this case, correct?

12 A. Determining navigable waterways is  
13 not within my purview.

14 Q. Okay. And it's not something that  
15 you're providing this Court testimony about.  
16 You're not saying, "This is a navigable  
17 waterway where these buoys were built," are  
18 you?

19 A. I am saying that if it is a navigable  
20 waterway, the Coast Guard could be called upon  
21 to conduct Coast Guard missions.

22 Q. Got it. And I think I understand,  
23 through your clarification, that what that  
24 means is if it were -- you're saying -- by  
25 saying that, you're not telling this Court

1 affirmatively this is or is not a navigable  
2 waterway. That is not in your purview, right?

3 A. I do not determine, personally,  
4 navigable waterways, that is correct.

5 Q. And it is not your testimony here  
6 today that it is, is it?

7 A. My testimony is that I've seen the  
8 Coast Guard declaration that defines this as a  
9 navigable waterway.

10 Q. And other than that, you have no  
11 personal knowledge as to whether this is a  
12 navigable waterway, correct?

13 A. I do not have any personal knowledge.

14 Q. You've never been there --

15 A. That is correct.

16 Q. -- right?

17 You've never studied it, right?

18 A. That is correct.

19 Q. You've seen only pictures on Fox and  
20 CNN?

21 A. And in the DOJ motion.

22 Q. Okay. You don't know what kind of  
23 traffic goes up and down the river at that  
24 section?

25 A. I do not.

1       Q. And you are not opining that it is a  
2 navigable waterway here today to this Court?

3       A. I have said that I've seen the Coast  
4 Guard declaration that it's a navigable  
5 waterway provided by Coast Guard District 8.

6       Q. I understand that you've seen the  
7 affidavit, but this is an important question.  
8 Other than seeing the affidavit, you have no  
9 other information -- and, by the way, the  
10 affidavit you're talking about -- let's be  
11 clear -- is from a lawyer for the Coast Guard,  
12 right?

13      A. I'd have to refer to the document on  
14 who signed it.

15      Q. Well, isn't it Brandy Parker of the  
16 Judge Advocate General?

17      A. I don't believe she signed the  
18 document.

19      Q. Can you tell me what document you're  
20 referring to?

21      A. The exhibit that you provided to us.

22      Q. Oh, Exhibit 1?

23      A. Yes.

24      Q. Oh, okay. I think I understand. So  
25 you're saying the only basis on which you know

1 whether or not this is a navigable waterway is  
2 this 39-year-old letter from T. W. Snook, which  
3 is Exhibit Number 1 that we went over, correct?

4 A. That is the only reference that I  
5 have.

6 Q. Okay. And let's be very clear. If  
7 we read Paragraph Number 3 of that singular  
8 reference that you have, it says, quote, "This  
9 represents" --

10 MS. KIMBALL: Hold up. Let me  
11 get it up so he can see it.

12 Okay. Go ahead.

13 Q. (BY MR. SWEETEN) "This represents  
14 the opinion of the Coast Guard only as to the  
15 extent of its own jurisdiction and does not  
16 address the jurisdiction of other agencies,"  
17 correct? That's what that says?

18 A. That is what the document says.

19 Q. All right. And that's the only basis  
20 upon which you are saying that you -- that  
21 you're even remotely discussing the idea of  
22 navigable waters, correct?

23 MS. KIMBALL: Objection --

24 MR. SWEETEN: Bad question. Let  
25 me ask it again.

1 Q. (BY MR. SWEETEN) The only thing that  
2 you've looked at that would lead you to believe  
3 this is a navigable water is this sheet that I  
4 just read Paragraph 3 from, correct?

5 A. That is the only reference that I've  
6 seen.

7 Q. You have no other personal knowledge  
8 to lead you to that conclusion or for that  
9 testimony, correct?

10 A. Determining navigable waterways is  
11 not within my purview.

12 Q. Okay. Thank you.

13 Captain Peters, in Paragraph 7  
14 of your affidavit, you say, "If the State of  
15 Texas seeks a permit to construct the floating  
16 barrier through the Army Corps of Engineers,  
17 the Army Corps of Engineers may consult the  
18 Coast Guard as a supporting agency." Did I  
19 read that first sentence correctly?

20 A. That is correct.

21 Q. And that means the Army Corps of  
22 Engineers does not always consult the Coast  
23 Guard on permits related to the Rivers and  
24 Harbors Act, correct?

25 A. I do not have that information.

1       Q. Well, I mean, you say here "may  
2 consult the Coast Guard." I would think that  
3 also means they may not consult the Coast  
4 Guard?

5       A. Permitting is not within my purview.

6       Q. Well, here, you're talking about  
7 seeking a permit; and you say the Corps of  
8 Engineers may consult the Coast Guard as a  
9 supporting agency. If that's outside of your  
10 purview, do you have an explanation for why  
11 that is contained in your sworn declaration?

12      A. In my personal experience, I have  
13 been contacted in previous tours by the Army  
14 Corps of Engineers.

15      Q. Okay. So there have been times that  
16 you were contacted. Do you recall what those  
17 projects were?

18      A. No.

19      Q. Were any of those projects on the  
20 Rio Grande River?

21      A. No.

22      Q. Were any of those projects in  
23 Maverick County, Texas?

24      A. No.

25      Q. Were any of those projects in

1       **Eagle Pass, Texas?**

2       A.     No.

3       Q.     Okay. And you would agree with me  
4     that there's likely to be a whole class of  
5     permits that the Corps of Engineers does not  
6     contact the Coast Guard about, correct?

7       A.     I do not have that information.

8       Q.     Okay. Do you know what the term  
9     "**navigable capacity**" means, Captain Peters?

10      A.     No, I do not.

11      Q.     Okay. Do you have an opinion one way  
12     or the other as to whether -- let me back up  
13     and ask it a different way.

14                  Since you've never been to the  
15     river, since you've not studied the river,  
16     since navigable capacity is not within your  
17     purview, would you agree with me that you have  
18     no opinion on whether or not the buoys, the  
19     string of buoys, interfere in any way with the  
20     traffic on the river?

21      A.     I'm not in a position to answer that.

22      Q.     And you're not suggesting they impact  
23     the navigable capacity, as you're sitting here  
24     today, are you?

25      A.     I'm not in a position to answer that.

1 Q. Okay. All right. Captain Peters, I  
2 don't have any -- well, let's take a 5-minute  
3 break just to make sure. I was about to end  
4 this, but give me just a few minutes to talk to  
5 my cocounsel here. Okay?

6 MS. KIMBALL: Before we go --  
7 well, we can off the record.

8 (Off the record from 12:39  
9 to 12:42 p.m.)

10 Q. (BY MR. SWEETEN) I just have, I  
11 think, one more question; and that is: The  
12 navigability determination, this one that we  
13 talked about --

14 A. Yes.

15 Q. -- are you aware of any more recent  
16 navigability determinations than this letter?

17 A. I am not aware of any other than that  
18 letter; and to the best of my knowledge, my  
19 personal knowledge, the Coast Guard has not  
20 been asked to provide any additional analysis.

21 Q. Okay. At this time point, have you  
22 understood the questions that I've asked you  
23 today, Captain Peters?

24 A. Yes.

Q. Okay. Are there any answers that you

1 | want to change that we discussed today?

2 A. No.

3 Q. Have I been courteous to you today,  
4 Captain Peters?

5 A. Yes, you have.

6 Q. Okay. I wish you a great vacation  
7 from here forward. We appreciate your time  
8 today. I hope I've been efficient in trying to  
9 conduct the examination. We wish you the very  
0 best.

11 MS. KIMBALL: I have one  
12 question I want to clarify before we go off the  
13 record.

14 MR. SWEETEN: Sure. Of course.

15 EXAMINATION

16 BY MS. KIMBALL:

17 Q. Captain Peters, you testified earlier  
18 about the documents that you saw in preparation  
19 for your deposition. Do you recall that  
20 testimony?

21 A. Yes.

22 Q. Do you recall if I showed you a  
23 photograph during prep?

24 A. I do not recall. The only  
25 photographs that I had seen were from the DOJ

1 motion, but I don't recall if we did that  
2 during the prep.

3       **Q. Okay.**

4                   MS. KIMBALL: No further  
5 questions.

6                   MR. SWEETEN: None from me.

7 Once again, we appreciate it.

8                   MS. KIMBALL: Oh, and he will  
9 read and sign.

10                  MR. SWEETEN: Debbie, we're  
11 going to need -- we're off the record, right?

12                  THE REPORTER: This concludes  
13 the deposition at 12:44 p.m.)

14                  (Deposition concluded at 12:44 p.m.)

15                  --ooOoo--

16

17

18

19

20

21

22

23

24

25

60

1 CHANGES AND SIGNATURE

2 WITNESS NAME: DATE OF DEPOSITION:

3 CAPTAIN JUSTIN PETERS August 7, 2023

4 PAGE/LINE CHANGE REASON

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

18 \_\_\_\_\_

19 \_\_\_\_\_

20 \_\_\_\_\_

21 \_\_\_\_\_

22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_

25 \_\_\_\_\_

61

1 I, CAPTAIN JUSTIN PETERS, have read the  
2 foregoing deposition and hereby affix my signature that  
3 same is true and correct, except as noted herein.

4

5

6 CAPTAIN JUSTIN PETERS

7

8 THE STATE OF \_\_\_\_\_ )

9 Before me, \_\_\_\_\_, on  
10 this day personally appeared CAPTAIN JUSTIN PETERS,  
11 known to me (or proved to me under oath or through  
12 \_\_\_\_\_) (description of identity card or other  
13 document) to be the person whose name is subscribed to  
14 the foregoing instrument and acknowledged to me that  
15 they executed same for the purposes and consideration  
16 therein expressed.

17 Given under my hand and seal of office on  
18 this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

19

20

21

22

NOTARY PUBLIC IN AND FOR

23

THE STATE OF \_\_\_\_\_

24

My Commission Expires: \_\_\_\_\_

25

62

1 STATE OF TEXAS )

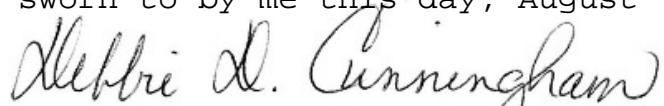
2 REPORTER'S CERTIFICATION

3 I, DEBBIE D. CUNNINGHAM, CSR, hereby certify that  
4 the witness was duly sworn and that this transcript is a  
5 true record of the testimony given by the witness.

6 I further certify that I am neither counsel for,  
7 related to, nor employed by any of the parties or  
8 attorneys in the action in which this proceeding was  
9 taken. Further, I am not a relative or employee of any  
10 attorney of record in this cause, nor am I financially  
11 or otherwise interested in the outcome of the action.

12 I further certify that pursuant to FRCP  
13 Rule 30(f)(1) that the signature of the deponent was  
14 requested by the deponent or a party before the  
15 completion of the deposition and that the signature is  
16 to be before any notary public and returned within 30  
17 days from date receipt of the transcript. If returned,  
18 the attached Changes and Signature Page contains any  
19 changes and the reasons therefore.

20 Subscribed and sworn to by me this day, August 7,  
21 2023.



22 Debbie D. Cunningham, CSR  
23 Expiration: 6/30/25  
24 INTEGRITY LEGAL SUPPORT SOLUTIONS  
9901 Brodie Ln, Ste. 160-400  
Austin, Texas 78748  
www.integritylegal.support  
512-320-8690; FIRM # 528